

## DETAILED ACTION

### Status of Claims

**After the amendment filed on 1/9/2008, claims 3, 16, 18, 22 & 23 are pending.**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toniolo (U.S. Publication Number 2006/0154220) in view of Rosedale (U.S. Patent Number 7,117,1136), Carnival Parties 5yr (NPL) and Parulski et al. (U.S. Patent Number 5,595,389).**

Referring to claim 3, Toniolo discloses providing a dance routine with music, involving at least one dancer (paragraph 0011), providing a video of the dance routine, with the music, showing the dancer's body but not the dancer's head (easily adjust the camera angle to suit a particular application), and the movement of the dancer's body in synchronism with the music (Fig. 13 & the associated text: paragraphs 0104-0106), recording the video appearance of the at least one celebrant's head during the playing of the music to the at least one celebrant (paragraph 0106: easily adjust the camera angle to suit a particular application). *Toniolo does not teach with the head in a substantially stationary disposition, disposing the head of at least one celebrant in an opening in a foreground enclosure disposed in front of the celebrant's head, recording*

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*the head in the opening and replacing the at least one celebrant's head in place of the at least one dancer's head at the position of the at least one dancer's head in the video of the at least one dance routine to provide a video of the dancer's body and the at least one celebrant's head and physically restraining the positioning of the at least one dancer's head so that the at least one dancer's head remains substantially in a fixed position during the performance of the dance routine.* Rosedale teaches with the head in a substantially stationary disposition (Figs. 1A, 4A, 4B & the associated text) and physically restraining the positioning of the at least one head so that the at least one head remains substantially in a fixed position during the performance of the dance routine (Figs. 1A, 4A, 4B & the associated text). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the head in a substantially stationary disposition, as disclosed by Rosedale, incorporated into Toniolo in order to allow input and feedback based on various parts of the user's body. In addition, it would have been obvious to a person of ordinary skill in the art to hold the head in a lateral direction, as taught by Rosedale, in an attempt to have little or predictable movement. As a result, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. In turn, because restraining the head in only a lateral direction as claimed has properties predicted by the prior art, it would have been obvious to have the head restrained in only the lateral direction in order to morph the head and body together via reference points with very little offset. Further, the fact that a combination was obvious to try might show it was obvious under U.S.C. 103. KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1742, 82 USPQ2d 1385,

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1386 (2007). *Toniolo/Rosedale does not teach disposing the head of at least one celebrant in an opening in a foreground enclosure and limiting the movements of the at least one celebrant's head in lateral, longitudinal and vertical directions and replacing the at least one celebrant's head in place of the at least one dancer's head at the position of the at least one dancer's head in the video of the at least one dance routine to provide a video of the dancer's body and the at least one celebrant's head.* Carnival Parties 5yr teaches disposing the head of at least one celebrant in an opening in a foreground enclosure and limiting the movements of the at least one celebrant's head in lateral, longitudinal and vertical directions (page 3) and recording the head in the opening (page 3: photograph taken). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include disposing the head of at least one celebrant in an opening in a foreground enclosure disposed in front of the celebrant's head, as disclosed by Carnival Parties 5yr, incorporated into Toniolo/Rosedale in order to give the image a different look. *Toniolo/Rosedale/Carnival Parties 5yr does not teach replacing the at least one celebrant's head in place of the at least one dancer's head at the position of the at least one dancer's head in the video of the at least one dance routine to provide a video of the dancer's body and the at least one celebrant's head and providing a video of the dance routine to the celebrant with the at least on celebrant's head replacing the at least one dancer's head.* However, Parulski et al. teaches replacing the at least one celebrant's head in place of the at least one dancer's head at the position of the at least one dancer's head in the video of the at least one dance routine to provide a video of the dancer's body and the at least one

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celebrant's head (Figs. 1 & 2B & the associated text). It would have been obvious to one of ordinary skill in the art at the time the invention was made to replacing heads, as disclosed by Parulski et al., incorporated into Toniolo/Rosedale/Carnival Parties 5yr so that the celebrant can view themselves performing the recorded dance moves.

**3. Claims 16 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Parulski et al. in view of Rosedale, The Hoagy Carmichael Collection, Korn (U.S. Patent Number 5,781,198) and Corset (U.S. Publication Number 2002/007718).**

Referring to claims 16 & 22, Parulski et al. discloses providing a video image and a synchronized audio recording on a medium capable of being duplicated (column 1 lines 55-58), the visual image and the audio recording being of a dancer providing a dance routine, removing the dancer's head from the video image (Figs. 1, 2A, 2B and the associated text), and substituting a celebrant's head on the dancer's body after removing the dancer's head from the dancer's body in the video (Figs. 1, 2A, 2B and the associated text) and processing the disposition and appearance of the celebrant's head on the dancer's body to assure that the celebrant's head is disposed on the dancer's neck (Figs. 1, 2A, 2B and the associated text). *Parulski does not disclose a dancer and where the head is in a substantially stationary lateral disposition and restraining only the dancer's head to a substantially unitary lateral position while the dancer is performing the dance routine in synchronism with the music, including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body, providing the image of the*

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*celebrant's head in a background of a particular color so that only the celebrant's head is visible in the background of the particular color, and eliminating the background of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head, providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's neck in replacement of the dancer's head.* However, Rosedale teaches where only the head is in a substantially stationary lateral disposition (Figs. 1A, 4A, 4B & the associated text, column 5 line 52 – column 7 line 45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include restraining only the dancer's head, as disclosed by Rosedale, incorporated into Parulski et al. in order to allow the other parts to move freely. *Parulski et al./Rosedale does not disclose a dancer, including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body, providing the image of the celebrant's head in a background of a particular color so that only the celebrant's head is visible in the background of the particular color, and eliminating the background of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head, providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the*

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*particular color and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's neck in replacement of the dancer's head.* However, The Hoagy Carmichael Collection teaches including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body (page 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include limiting movement, as disclosed by The Hoagy Carmichael Collection, incorporated into Parulski et al./Rosedale in order to limit the movement of the user and to give the cut out a different appearance. *Parulski et al./Rosedale/The Hoagy Carmichael Collection does not teach a dancer and providing the image of the celebrant's head in a background of a particular color so that only the celebrant's head is visible in the background of the particular color, and eliminating the background of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head, providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's neck in replacement of the dancer's head.* However, Korn teaches providing the image of the celebrant's head in a background of a particular color so that only the celebrant's head is visible in the background of the particular color (Figs. 4B & 4D & the associated text), and eliminating the background of the particular color from the image

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of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head (column 3 lines 11-15) and providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color (Figs. 4B & 4D & the associated text. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include providing the image of the celebrant's head in a background of a particular color and eliminating the background of the particular color, as disclosed by Korn, incorporated into Parulski et al./Rosedale/The Hoagy Carmichael Collection in order to allow for real time background replacement. *Parulski et al./Rosedale/The Hoagy Carmichael Collection /Korn does not teach a dancer, providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color and providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head.* However, Corset teaches providing a dancer (paragraph 0005), providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color (paragraphs 0010 & 0011), and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head (paragraphs 0010 & 0011). It would have been

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obvious to one of ordinary skill in the art at the time the invention was made to include providing the image in a foreground and eliminating the foreground, as disclosed by Corset, incorporated into Parulski et al./Rosedale/The Hoagy Carmichael Collection/Korn in order to replace and morph the heads on each body.

**4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parulski et al. in view of Rosedale, The Hoagy Carmichael Collection and Corset.**

Referring to claim 18, Parulski et al. discloses providing a video image and a synchronized audio recording on a medium capable of being duplicated (column 1 lines 55-58), the visual image and the audio recording being of a dancer providing a dance routine, removing the dancer's head from the video image (Figs. 1, 2A, 2B and the associated text), and substituting a celebrant's head on the dancer's body after removing the dancer's head from the dancer's body in the video (Figs. 1, 2A, 2B and the associated text) and processing the disposition and appearance of the celebrant's head on the dancer's body to assure that the celebrant's head is disposed on the dancer's neck (Figs. 1, 2A, 2B and the associated text). *Parulski does not disclose a dancer and where the head is in a substantially stationary lateral disposition, including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body, providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color, and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's*



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*head.* However, Rosedale teaches where the head is in a substantially stationary lateral disposition (Figs. 1A, 4A, 4B & the associated text). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include where the head is in a substantially stationary lateral disposition, as disclosed by Rosedale, incorporated into Parulski et al. in order to allow input and feedback based on various parts of the user's body. *Parulski et al./Rosedale does not disclose a dancer, including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body and providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color, and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head.* However, The Hoagy Carmichael Collection teaches including limiting the lateral, longitudinal and vertical movements of the celebrant's head on the dancer's body during the performance of the dance routine by the dancer's body (bottom of page 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include limiting movement, as disclosed by The Hoagy Carmichael Collection, incorporated into Parulski et al./Rosedale in order to limit the movement of the user and to give the cut out a different appearance. *Parulski et al./Rosedale/The Hoagy Carmichael Collection does not teach a dancer and providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color, and eliminating the foreground of the particular*

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*color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head.* However, Corset teaches a dancer (paragraph 0005) and providing the image of the celebrant in a foreground of a particular color so that only the celebrant's head is visible in the foreground of the particular color (paragraphs 0010 & 0011), and eliminating the foreground of the particular color from the image of the celebrant's head before the image of the celebrant's head is transferred to the dancer's body in replacement of the dancer's head (paragraphs 0010 & 0011). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include providing the image in a foreground and eliminating the foreground, as disclosed by Corset, incorporated into Parulski et al./Rosedale/The Hoagy Carmichael Collection in order to replace and morph the heads on each body.

**5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Parulski et al./Rosedale/The Hoagy Carmichael Collection /Korn/Corset and further in view of Stamper et al. (U.S. Patent Number 6,894,686) and Horigami et al. (U.S. Patent Number 6,758,756).**

Referring to claim 23, Parulski et al./Rosedale/The Hoagy Carmichael Collection/Korn/Corset discloses a method as set forth in claim 22 and including the steps of: and providing an individualized background after the removal of the background of the particular color (column 7 lines 17-32 of Korn). *Parulski et al./Rosedale/The Hoagy Carmichael Collection/Korn/Corset does not disclose enlarging the celebrant's head relative to the dancer's head in the video image to insure that the*

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*head is disposed on the dancer's neck regardless of a slight displacement of the dancer's body from a particular position and including the step of: employing digitizing techniques to adjust for changes in the position of the dancer's body, thereby to align the dancer's body with the celebrant's head.* However, Stamper et al. teaches enlarging the celebrant's head relative to the dancer's head in the video image to insure that the head is disposed on the dancer's neck regardless of a slight displacement of the dancer's body from a particular position (column 2 lines 57-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include enlarging, as disclosed by Stamper et al., incorporated into Parulski et al./Rosedale/The Hoagy Carmichael Collection /Korn/Corset in order to manipulate images. *Parulski et al./Rosedale/The Hoagy Carmichael Collection/Korn/Corset/Stamper et al. does not disclose including the step of: employing digitizing techniques to adjust for changes in the position of the dancer's body, thereby to align the dancer's body with the celebrant's head.* However, Horigami et al. teaches including the step of: employing digitizing techniques to adjust for changes in the position of the dancer's body, thereby to align the dancer's body with the celebrant's head (column 11 lines 26-65). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include digitizing the recorded video, as disclosed by Horigami et al., incorporated into Parulski et al./Rosedale/The Hoagy Carmichael Collection/Korn/Corset/Stamper et al. so that the video will look as real as possible.

***Response to Amendment***

6. The Declaration by Janet Roston-Weiss and Michael McDonald filed on 6/17/2008 under 37 CFR 1.131 has been considered but is ineffective to overcome the Carnival Party 5yr. reference. The evidence submitted is insufficient to establish a reduction to practice of the invention in this country or a NAFTA or WTO member country prior to the effective date of the Carnival Party 5yr. reference. The inventors have failed to show actual reduction to practice of the invention prior to the effective date of the reference because there is no evidence of the claimed invention of the working product. Merely, stating that the system was successfully operated in the period between July 11, 2003 and July 16, 2003 does not show actual reduction to practice.

***Response to Arguments***

7. Applicant's arguments filed 6/17/2008 have been fully considered but they are not persuasive. For claim 3, the applicant submits Declaration of Janet Roston-Weiss and Michael McDonald to try to overcome the Carnival Reference. From noted above, the Declarations did not overcome the Carnival and is still being considered prior art. The Carnival reference teaches the currently amended claim language. The applicant also states that no disclosure in any of the references discloses several limitations. However, the applicant does not explain why and how these limitations are not met. Therefore, the rejections and references still apply. In regards to Rosedale, Rosedale teaches holding a head in a position using immobilization devices (columns 5 – 7). It does not matter that the Rosedale's device is intended to use a person's attempted

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movement as input to a simulation. Rosedale still teaches holding a head in a position using immobilization devices.

8. Applicant's arguments with respect to claims 16, 18, 22 & 23 have been considered but are moot in view of the new ground(s) of rejection.

***Citation of Pertinent Prior Art***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Image: 029251 reichenb holmes.jpg teaches a cut-out figure of Sherlock Holmes where the face is cut out so the visitor may stand behind and be photographed.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to KESHA FRISBY whose telephone number is (571)272-8774. The examiner can normally be reached on Monday-Friday 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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